

STRAZULO FITZGERALD LLP
275 BATTERY ST., SUITE 200
SAN FRANCISCO CALIFORNIA 94111
TEL. 415.394.9500 FAX. 415.394.9501

Nancy L. McCoy (SBN 184983)
Cortney L. McDevitt (SBN 241879)
STRAZULO FITZGERALD, LLP
275 Battery Street, Suite 200
San Francisco, California 94111
Telephone: (415) 394-9500
Facsimile: (415) 934-9501

Attorneys for Defendants
See Signature Page

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

HARRIS L. WINNS,

Plaintiff,

v.

BLAKELY SOKOLOFF TAYLOR &
ZAFMAN, LLP, ANTHONY INTIL, CANDY
MIELKE, JIM SALTER, MICHAEL MALLIE,
JOHN P WARD, ED TAYLOR, DAN DEVOS,
DIANE ROBSON, LESTER VINCENT STEVE
ZELMAN, DAVE MONTOYA, KAREN
WILSON, TAREK FAHMI, LAURA E. INNES,
RONALD F. GARRITY, CHARLES WALL

Defendants.

CASE NO.: C08 02622 JW

**DECLARATION OF NANCY L. MCCOY
IN SUPPORT OF RULE 12(b)(6)
MOTION TO DISMISS PLAINTIFF'S
COMPLAINT**

DATE: September 15, 2008
TIME: 9:00 am
DEPT: Courtroom 8, 4th Floor
JUDGE: James Ware

I, Nancy L. McCoy, declare:

1. I am an attorney at law, duly licensed to practice before all the Courts of the State of California, I am a Partner with the law firm of Strazulo Fitzgerald LLP, counsel for Defendants Blakely, Sokoloff, Taylor & Zafman, LLP, Anthony Intil, Candy Mielke, Michael Mallie, John P. Ward, Ed Taylor, Dan Devos, Diane Robson, Lester Vincent, Jim Salter, Dave Montoya, Tarek Fahmi, Steve Zelman, and Karen Wilson in this action, and on whose behalf I make this declaration. If called as a witness, I could and would competently testify to the following facts, all of which are within my own personal knowledge.

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2. Attached as Exhibit A hereto is a true and correct copy of Plaintiff's Complaint in this action, filed on May 23, 2008.

3. On July 18, 2008, the Complaint was served on Defendant Blakely, Sokoloff, Taylor & Zafman, LLP.

4. Defendants' Motion to Dismiss and Motion to Strike will be filed on August 6, 2008 within 20 days of service of the complaint, and it is thus timely filed.

5. Defendants will request this Court take judicial notice of the proceedings in Winns v. Blakely Sokoloff Taylor & Zafman, LLP, et al, Santa Clara Superior Court Case No. 107CV090534, filed August 1, 2007 and dismissed March 21, 2008. The Santa Clara Superior Court will only copy a very limited number of pages for certification. Therefore, Defendants were unable to obtain certified copies of the entire record in Santa Clara Superior Court Case No. 107CV090534.

6. Attached as Exhibit 4 to Defendants' Request for Judicial Notice is a true and correct copy of the First Amended Complaint filed in Santa Clara County Superior Court Case No. 107CV090534.

7. Attached as Exhibit 5 to Defendants' Request for Judicial Notice is a true and correct copy of Defendants' Blakely Sokoloff Taylor & Zafman, LLP, Anthony Intil, Candy Mielke, Michael Mallie, John P. Ward, Ed Taylor, Dan Devos, Diane Robson, and Lester Vincent demurrer to Plaintiff's Complaint.

8. Attached as Exhibit 6 to Defendants' Request for Judicial Notice is a true and correct copy of Plaintiff's Opposition to Defendants' Demurrer.

9. Attached as Exhibit 8 to Defendants' Request for Judicial Notice is a true and correct copy of Defendants' Ex Parte Application for Dismissal of Plaintiff's First Amended Complaint.

10. Attached as Exhibit 10 to Defendants' Request for Judicial Notice is a true and correct copy of Plaintiff's Motion to Vacate Dismissal.

11. The hearing on this motion to dismiss was set by the clerk of the court for a hearing

1 more than 30 days after the service of the motion, as the docket condition of the court required a
2 later hearing. The clerk of the court assigned a date that was the first available for the court's
3 docket.

4 12. On March 20, 2008, Harris Winns, Plaintiff appearing in pro per, requested all
5 communications be directed to him in writing, via U.S. Mail. A true and correct copy of Plaintiff's
6 correspondence dated March 20, 2008 is attached hereto as Exhibit B.

7 13. I attempted to meet and confer with Mr. Winns, regarding the date of the hearing on
8 this motion. Per Plaintiff's request, meet and confer efforts were made in writing and delivered via
9 U.S. Mail. A true and correct copy of this meet and confer correspondence is attached hereto as
10 Exhibit C.

11 14. As of the date of the filing of this motion, I have not received a response from
12 Plaintiff.

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14 I declare under penalty of perjury under the laws of the State of California that the foregoing
15 is true and correct. Executed this 5th day of August, 2008 in San Francisco, California.
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